IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

Cr.A No.527 of 2004

Decided on : October 1, 2007

Harish Chand **…Appellant.**

Versus

State of H.P. **…Respondent.**

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The Hon'ble Mr. Justice Surjit Singh, Judge.

The Hon'ble Mr. Justice Surinder Singh, Judge.

Whether approved for reporting?

For the Appellant : Mr. N.K. Thakur, Advocate.

For the Respondent : Mr. Som Dutt Vasudeva, Additional Advocate General, with Mr. D.S. Nainta, Deputy Advocate General.

Surjit Singh, Judge(Oral)

Appellant Harish Chand has preferred this appeal against the judgment of the trial Court whereby he has been convicted of offence under Section 20(C) of the Narcotic Drugs and Psychotropic Substances Act and sentenced to undergo rigorous imprisonment for ten years and to pay a fine of Rs.1,00,000/-, in default of payment of fine to undergo rigorous imprisonment for a further period of two years, for allegedly possessing 16 kgs. of *Charas* on 23.11.2002 at Bus Stand Banikhet.

2. Prosecution version, as per record, may be summed up thus. On 23.11.2002, PW-11 Gianeshwar Singh, Assistant Superintendent of Police (an IPS probationer), was on VVIP duty at Banikhet alongwith a number of police officials. The time was around 8 in the morning. He noticed that the appellant, who was holding a green

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Whether reporters of the local papers may be allowed to see the judgment?

coloured bag, got unnerved on seeing him and other police officials accompanying him. That aroused suspicion of PW-11 Gianeshwar Singh. He went to the appellant, who was standing in the rain shelter, and enquired about his name and other particulars and told him that it was intended to search his person and the bag he was carrying, because he suspected that he (appellant) was carrying some contraband. The said Police Officer told the appellant that the latter had the right to be searched in the presence of a Magistrate or a Gazetted Officer and in case he so desired search of his person and the bag could be arranged in the presence of a Magistrate or a Gazetted Officer. Appellant opted to be searched by PW-11 Gianeshwar Singh himself, there and then. Thereafter, the bag of the appellant was searched. It was found to contain stuff that smelt like *Charas*. Scale and weights were arranged from a nearby shop and the stuff was weighed. It was found to be 16 kgs. Two samples, each weighing 25 grams, were separated. Search and seizure proceedings were conducted in the presence of two independent witnesses, namely PW-10 Surinder Bhawani and one Krishan Hastu. Further investigation of the case was handed over to PW-12 ASI Amar Singh. Case property was also handed over to him by PW-11 Gianeshwar Singh. PW-12 ASI Amar Singh put his own seal on the sample parcels and the parcel containing the bulk stuff. The parcels containing the bulk stuff and the samples were deposited with the MHC. One sample was sent by the MHC to the Chemical Examiner, who reported that it contained contents of *Charas*, because it had 28.15 per cent resin.

3. On completion of the investigation and the receipt of the report of the Chemical Examiner, appellant was sent up for trial. Trial Court charged the appellant with the offence under Section 20 of the

Narcotic Drugs and Psychotropic Substances Act and on his pleading not guilty put him on trial, on the conclusion whereof, the trial Court held the appellant guilty and convicted and sentenced him, as aforesaid.

4. We have gone through the record and heard the learned counsel for the appellant.

5. The submissions made by the learned counsel for the appellant are that witness Surinder Bhawani is a stock witness of the police and that otherwise also his statement is different from the testimony of PW-11 Gianeshwar Singh in material particulars and, therefore, the case of the prosecution cannot be said to be established beyond reasonable doubt.

6. We have considered the aforesaid submissions in the light of the evidence on record. PW-11 Gianeshwar Singh has, in no uncertain terms, testified that when he was on VVIP duty, opposite the rain shelter at Bus Stand Banikhet, he saw the appellant with a green coloured bag in his hand waiting for a bus and that at that time he (appellant) was standing in the rain shelter. He has further stated that when on seeing him and the police officials accompanying him the appellant became nervous, he suspected that he might be carrying some contraband and so he went to him in the rain shelter, and enquired his name and other particulars and then searched the bag after giving him an option for being searched in the presence of a Magistrate or some other Gazetted Officer and on search *Charas* was recovered from the bag. PW-10 Surinder Bhawani has corroborated the testimony of PW-11 Gianeshwar Singh. However, in the cross-examination, he has stated that when he reached the rain shelter the green coloured bag was not held by the appellant but it was lying on

the floor of the rain shelter at the site where he (appellant) was sitting. No suggestion was put to this witness or PW-11 Gianeshwar Singh, in the cross-examination, that the appellant disclaimed the bag or that it belonged to some other person or that it was planted upon the appellant on suspicion or otherwise. Therefore, the statement of PW-10 Surinder Bhawani that the bag was lying on the floor of the rain shelter, when he reached there, in our considered view, cannot be taken to be at variance with that of PW-11 Gianeshwar.

7. It is true that PW-10 Surinder Bhawani had been a witness of the police in one more case, i.e. FIR No. 69, pertaining to the same Police Station as the present case, i.e. Police Station Dalhousie, and that case was also regarding recovery of *Charas*, from another person by the name of Bodh Singh, but that by itself cannot be a ground for disbelieving his testimony, which has otherwise remained unshattered, inspite of lengthy cross-examination conducted by the defence counsel.

8. In view of the above discussed position, we find no merit in the submissions made on behalf of the appellant. We also do not see any other defect in the judgment of the trial Court which is based on proper appreciation of evidence, with respect to all the material aspects of the case, including link evidence.

9. As a result of the above discussion, appeal is dismissed.

(Surjit Singh), J

October 1, 2007(sd) **(Surinder Singh), J**